

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UVAS, LLC, a South Carolina Limited
Liability Company)

Plaintiff,)

v.)

XENEX DISINFECTION SERVICES,
LLC, a, Texas Limited Liability Company,)

Defendant.)

Case No.: 2:16-cv-00163- DCN

COMPLAINT

JURY TRIAL DEMANDED

AND NOW COMES Plaintiff UVAS, LLC ("Plaintiff"), by and through its undersigned counsel, and files the following Complaint, alleging as follows:

PARTIES

1. Plaintiff is a South Carolina limited liability company with its registered office at 1570 Spinnaker Lane, Charleston, South Carolina.

2. Upon information and belief, Defendant Xenex Disinfection Services, LLC, is a Texas limited liability company with a principal place of business at 121 Interpark, Suite 104, San Antonio, Texas 78216

VENUE AND JURISDICTION

3. Upon information and belief, Defendant regularly markets and sells their products and services in the State of South Carolina and in this Division and engaged in the activities complained of herein in the State of South Carolina and in this Division.

4. The matter in controversy exceeds, exclusive of interest and costs, the sum of

Seventy-Five Thousand Dollars (\$75,000.00).

5. Jurisdiction is founded on the diversity of citizenship of the parties as alleged above, and pursuant to 15 U.S.C. § 1121, and 28 U.S.C. § 1338(a), in that this case arises under the trademark laws of the United States, 15 U.S.C. §§ 1051, *et seq.*

6. Jurisdiction over the remaining unfair competition claims and common law trademark infringement claims arising pursuant to the laws of the State of South Carolina, is founded under the provisions of 28 U.S.C. § 1338(b) in that said claims are joined with a substantial and related claim under the trademark laws of the United States, 15 U.S.C. §§ 1051 *et seq.*

STATEMENT OF FACTS

7. Plaintiff is the owner of United States Patent Nos. 6,656,424, 6,911,177, and 8,067,750 and foreign patents directed to devices and methods of disinfection using ultraviolet radiation to disinfect facilities such as hospitals, surgical suites and other health care facilities (the “Patents”).

8. Plaintiff granted an exclusive license to Tru-D, LLC (“Tru-D”) to make and use devices and methods for disinfection claimed in the Patents.

9. Tru-D manufactures and sells disinfection devices manufactured under the Patents, for which it pays the Plaintiff a royalty for each disinfection device sold on a per unit basis.

10. Defendant markets and sells disinfection devices in the United States, and upon information and belief, throughout the United States, including South Carolina.

11. Defendant markets and sells its disinfection devices to hospitals and other health care facilities.

12. Defendant is a direct competitor of Plaintiff’s licensee, Tru-D.

13. Defendant has made and continues to make false and misleading statements and misrepresentations regarding the efficacy of Tru-D’s disinfection devices, and such

misrepresentations have been published by Defendant to the public, and to customers and to potential customers of Tru-D.

14. The false and misleading statements and misrepresentations include the following subject matters:

- a) the efficacy and efficiency of the Xenex disinfection devices;
- b) the efficacy and efficiency of competing disinfection devices;
- c) the efficacy and efficiency of other disinfection methods;
- d) reviews of the Xenex disinfection devices by third parties;
- e) scientific studies and reviews of other disinfection devices.

15. Defendant made and continues to make such false and misleading statements and misrepresentations for the purpose of promoting its disinfection devices and for the purpose of persuading customers and potential customers to purchase its disinfection devices.

16. Defendant's misrepresentations and false and misleading statements have been published to potential customers of Tru-D, and the misrepresentations and false and misleading statements have influenced, and continue to influence, the purchasing decisions of potential customers of Tru-D, and specifically persons and entities that intend to purchase disinfection devices.

17. Since the Plaintiff is paid a royalty for each disinfection device sold by Tru-D, the actions of the Defendant have and will cause injury to a commercial interest of Plaintiff, and upon information and belief, to the reputation of Plaintiff.

18. The false and misleading statements and misrepresentations by Defendant as aforesaid impact the public, which uses health care facilities that require disinfection, and subjects the public to the potential harm of allowing infections to occur that could have been avoided but for the false and misleading statements and misrepresentations.

COUNT I

VIOLATION OF LANHAM ACT

19. Plaintiff hereby realleges, as fully as if set forth herein verbatim, the allegations of Paragraphs 1 through 18, inclusive.

20. The above-alleged acts are in violation of 15 U.S.C. § 1125(a), in that Defendant has, in commercial advertising and/or promotion, made false and misleading statements and misrepresented the nature, characteristics, and qualities of its goods and/or services.

21. Plaintiff believes that it is, and is likely to be, damaged by such misrepresentations by reason of the likelihood that purchasers will rely on such false and misleading statements and misrepresentations in making purchasing decisions.

JURY TRIAL DEMANDED.

COUNT II

SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

22. Plaintiff hereby realleges, as fully as if set forth herein verbatim, the allegations of Paragraphs 1 through 21, inclusive.

23. The acts of the Defendant as aforesaid are unfair methods of competition and unfair and deceptive acts or practices in the conduct of its trade or commerce as contemplated by the South Carolina Unfair Trade Practices Act, S.C. Code §§ 39-5-10 *et seq.*

24. The acts of the Defendant as aforesaid are willful and knowing uses of unfair and deceptive methods, acts and practices.

25. The acts of the Defendant as aforesaid are deceptive acts and practices which are directed at the public, and which are likely to be repeated, and therefore, have an impact on the public.

JURY TRIAL DEMANDED.

ALLEGATION OF DAMAGES

26. Plaintiff hereby realleges, as fully as if set forth herein verbatim, the allegations of Paragraphs 1 through 25, inclusive.

27. By reason of Defendant's acts alleged herein, Plaintiff has and will suffer damage to its commercial interests, reputation and goodwill in the loss of royalties Plaintiff would have received but for Defendant's acts.

JURY TRIAL DEMANDED.

PRAYER FOR RELIEF

AS TO ALL COUNTS:

Plaintiff prays:

A. That Plaintiff be granted judgment against Defendant for all damages sustained by Plaintiff by reason of the acts of Defendant as aforesaid;

B. That any and all advertising or promotional materials containing false, misleading statements or misrepresentations be delivered up and destroyed;

C. That the Court enjoin and restrain Defendant from any further illegal acts as set forth herein;

D. That the Court order an accounting of Defendant's profits obtained in connection with its false and misleading statements;

E. That the costs of this action be awarded Plaintiff;

F. That Plaintiff be awarded its reasonable attorney's fees; and

G. That the Court grant such other and further relief as it shall deem just.

H. That the Court award Plaintiff treble the amount of actual damages sustained by Plaintiff.

BARNWELL, WHALEY, PATTERSON,
AND HELMS, LLC

By: /s/ B. Craig Killough
B. Craig Killough
Fed. ID No. 2330
David S. Cox
Fed. ID No 6041
John W. Fletcher
Fed. ID No. 9375
288 Meeting Street
Charleston, SC 29401
(843) 577-7700

Dated: **January 19, 2016**
Charleston, South Carolina

JURY TRIAL DEMANDED